

AAA Team Sales Tax, LLC

February 27, 2023

Nevada Tax Commission  
1550 College Parkway, Suite 115  
Carson City, NV 89706

Subject:

- A. **Governor Joe Lombardo signed an executive order Thursday requiring all executive branch entities to review existing state regulations and recommend at least 10 to be removed by May 1, 2023**
- B. **Nevada Department of Taxation requiring taxpayers to either e-mail audit records or drop off audit records at the Warm Springs Office.**

Hello Commissioners,

- A. **In consideration of the Governor's Executive Directive, please consider helping to remove or change the following regulations:**

- 1. **NRS 360B**

Purpose of the Regulation: This regulation established Nevada's membership in the Streamlined Sales and Use Tax Agreement. The idea was set up a convenient way for local businesses and out of state businesses to report sales and use tax to the Nevada Department of Taxation and or other State Tax Departments. This regulation has nothing to do with determining the taxability of a sales transaction. Nevada Revised Statute (NRS) 372 is the bible for determining the taxability of a sales transaction.

Reasons for removing the Regulation:

There are 23 full members and one Associate member. That leaves 26 states that are not part of this agreement. Of importance, California, Florida, New York, Pennsylvania, and Texas have zero association with this agreement. In fact, the last time a state joined was in 2010. The cost of staying in the agreement exceeds the benefit. Very few businesses use the Streamlined Sales and Use Tax System to file sales and use tax returns with the Department.

The Department's audit section quite often improperly interprets this regulation and small businesses end up paying the price financially. Many small businesses have been forced to close due to an audit that was not done properly. When a small business closes, our economy gets hurt.

Requested Action: Remove the NRS 360B from the books.

- 2. **NRS 360.230, NRS 360.231, and NRS 372.740**

Purpose of the Regulations: These are the regulations that established the audit section in the Nevada Department of Taxation.

Reasons for removing the Regulations:

Again, the cost exceeds the benefit. What does that mean? They do not bring in enough actual revenue to pay for the cost of their services. In order to be a benefit to your organization in today's business world, audit sections need to be more like consultants. The old style of auditing by threats and non-communication has gone the way of the dinosaur.

Request Action: Remove these Regulations so that out-sourcing of the function can be considered.

3. **NRS 360.390**

Purpose of the Regulation: This regulations gives authorization to the Officer (person) who enters the final order for a petition for redetermination that becomes final 30 days after service on a petitioner. This phrase has been used by the Department to perform a redetermination that is approved by an Audit Manager before the taxpayer actually gets a chance to go before the Administrative Law Judge (ALJ).

Reason for changing the Regulation: The Legislature intended for someone separate from the audit section to review a petition for redetermination. The current redetermination process is like putting a coyote in charge of the chicken pen. Allowing the Audit Manager to be the Prosecutor, Judge, and Jury of a petition for petition for a redetermination is a violation of the Nevada Taxpayers' Bill of Rights.

Request Action: Do not allow anyone from the audit section to approve the redetermination. That person needs to be separate from the audit section. The Department needs to do a better job of explaining the appeal process. Explain that the appeal process starts with a petition for redetermination and the Department needs to be very clear that this is not the Request for Hearing with Administrative Law Judge (ALJ). Inform the taxpayer that they can directly request an oral hearing with the Administrative Law Judge (ALJ) as prescribed in NRS 360.365.

4. **NRS 360.350 Notice of determination required; method and effect of service.**

Purpose of the Regulation: This regulation explains how the determination is to be served to the taxpayer. Right now, it is to be served to the taxpayer by U.S. mail or in person.

Reason for changing the Regulation: With small businesses being busy with running daily businesses operations and often changes mailing addresses and/or physical addresses throughout the life of the business, a case could be made that important notices would have a higher response rate with an e-mail than a letter through the United Post office. Again, I am not a fan or supporter of sending audit records via email but sending a simple request for the taxpayer to contact the Department may be acceptable with the proper security precautions. It needs mentioning that the Nevada Secretary of State uses email as the primary way to communicate with taxpayers.

Request Action: Allow an email to be sent to the taxpayer informing he or she to contact the Department. Again, I am talking about audit records.

5. **NAC 360.130 Burden of proof; presentation of evidence**

Purpose of the Administrative Code: To explain who has the burden of proof at a oral hearing before the Administrative Law Judge (ALJ) or the Nevada Tax Commission.

Reason for changing the Regulation: I think this Administrative Code is really meant for the taxpayer who furnishes no audit records. Because there always will b a debate between the taxpayer and the Department on what records are needed to perform the audit, the Department on occasions over plays this Administrative Code. In fact, at times, they violate the Nevada Taxpayers' Bill of Rights. I think with the Nevada Taxpayers' Bill of Rights and Technical Bulletins, this Administrative Code becomes less needed.

Request Action: Remove the Administrative Code from the books.

**B. Comment on the Nevada Department of Taxation requiring taxpayers to either e-mail audit records or drop off audit records at the Warm Springs Office.**

Even with the former Governor lifting the State of Emergency in May 2022, the audit section is still requiring taxpayers to either email audit records or drop off audit records at the Warm Springs office. I do think you know the main problem with this demand. Is it safe and secure? No, it is not! There is an additional burden and risk when audit records are dropped off at the Warm Springs office. You ask how? First dropping off the audit records at the Warm Springs office is a very big inconvenience to the taxpayer. Secondly, the inventory of the audit records delivered is very time consuming. Think about the time lost to just do the audit. Thirdly, the Nevada Taxpayers' Bill of Rights requires the taxpayer only to provide the minimum amount of audit records to complete the audit. By requiring the taxpayer to drop off boxes of audit records before even looking at them is a violation. Fourthly, scanning the audit records with the big scanner they now have in the Warm Springs office is very risk. The more documents you have scanned into the Department "cloud space", the more opportunity for a hacker to gain access to the taxpayer's personal information. Fifthly, I do think the big scanner at the Warm Springs office is a good idea for Revenue to use but a horrible idea for an auditor to use. Again, you may ask why? It makes the auditor lazy. What they will do (which by the way I saw), is scan all the audit records onto their laptop and then go home to work on the audit. Now, you even have a bigger problem with "Safe and Secure". The auditor has a mobile scanner which is better than that big scanner at the Warm Springs office. Again, you may ask why? It requires the auditor to look at each document and decide which ones to scan and which ones to not scan. It forces the auditor to think which in the long run makes the auditor more productive. Also, the minimum amount of scan documents on the auditor's laptop, the better from a "Safe and Secure" standpoint. It helps on keeping the auditor from becoming lazy. It forces the auditor to communicate with the taxpayer. Communication is the key to a successful audit. Again, the Nevada Taxpayers' Bill of Rights requires the taxpayer to only provide the minimum amount of audit records to complete the audit. Will there be a disagreement between the Department and the taxpayer on what audit records are needed to complete the audit. Absolutely, that is one reason for expert testimony at the oral hearing before the Administrative Law Judge (ALJ).

Now all these problems with "Safe and Secure" could be avoided if the auditor would just do field audit work at the taxpayer business location. Never know, the auditor may learn a thing or two from the taxpayer.

Having been an auditor for over 30 years, I am a big proponent of auditors working from home. My problem with the Department's current policy is the safety and security of audit records.

Thank you and be Safe!

Ron Voigt  
Consultant